

STATE OF MICHIGAN
COURT OF APPEALS

KAREN FREEHLING,

Plaintiff-Appellee,

v

RONALD VORRATH,

Defendant-Appellant,

and

BROOKS ARCHITECTURAL, INC.,

Defendant.

UNPUBLISHED

April 28, 2000

No. 206231

Berrien Circuit Court

LC No. 93-003817-CK

Before: Collins, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting judgment in favor of plaintiff based on an arbitration award. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought suit alleging various defects in a home built by defendant, a contractor. The parties referred the matter to binding arbitration. In an initial decision, the arbitrators awarded plaintiff credit in the amount of \$13,943.16. Subsequently, the arbitrators awarded plaintiff an additional credit in the amount of \$16,460.60. The neutral arbitrator agreed that the additional credit was to be awarded only if it was shown that defendant prepared his estimate of the cost of construction from the plans provided by plaintiff.

During a hearing on plaintiff's motion for entry of judgment on the arbitrators' award, the trial court rejected defendant's assertion that an admitted incident of improper ex-parte contact between plaintiff, her arbitrator, her counsel, and the neutral arbitrator resulted in prejudice. After adjourning the proceedings to allow the arbitrators to make further findings, and after the arbitrators, by a vote of two to one, awarded plaintiff the additional credit, the trial court entered judgment in favor of plaintiff in the amount of \$30,403.76, plus interest and costs.

On appeal, we granted defendant's motion to remand for an evidentiary hearing on the issue of whether other ex-parte communications between plaintiff's representatives and the neutral arbitrator had occurred, and if so, whether such communications resulted in partiality. After a hearing, the trial court concluded that the alleged ex-parte communications either did not occur, or did not result in the partiality of the neutral arbitrator.

Judicial review of an arbitration award is limited. An award can be vacated if it was obtained through fraud, duress, or other undue means, or was the result of evident partiality. MCR 3.602(J). Review on the grounds that the award was against the great weight of the evidence or was not supported by substantial evidence is precluded. *Donegan v Michigan Mutual Ins Co*, 151 Mich App 540, 549; 391 NW2d 403 (1986).

Defendant argues that the trial court erred by entering judgment on the arbitration award for the reason that the award was the result of evident partiality on the part of the so-called neutral arbitrator. We disagree. After meeting with the parties to review findings, the arbitrators, by a vote of two to one, awarded plaintiff the additional credit. Defendant's arbitrator cast the dissenting vote. Contrary to defendant's assertion, the neutral arbitrator did not change his vote on the issue of the additional credit. In making the initial award of the additional credit, the neutral arbitrator indicated that the award would be proper if the evidence showed that defendant's estimate was based on plans provided by plaintiff. Defendant does not and could not argue that the award is not supported by substantial evidence. *Id.* To overturn an arbitration award, partiality or bias must be direct and certain, and not indirect and speculative. *Gordon v Sel-Way, Inc v Spence Brothers, Inc*, 177 Mich App 116, 120-121; 440 NW2d 907 (1989), *aff'd in part and rev'd in part* 438 Mich 488; 475 NW2d 704 (1991). After hearing evidence, the trial court concluded that no ex-parte contact involving the neutral arbitrator resulted in partiality. Defendant's assertion to the contrary is based wholly on speculation. He has not demonstrated the direct, certain partiality necessary to vacate an arbitration award. MCR 3.602(J)(1)(b).

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski